Volume 6 | Number 5 Article 2

2-24-1995

Cases, Regulations and Statutes

Robert P. Achenbach Jr.
Agricultural Law Press, robert@agrilawpress.com

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

DISCHARGE. The debtor had granted a bank a security interest in farm livestock, products, inventory, equipment, accounts, instruments, crops and all proceeds of collateral. The debtor sold several items of collateral, including crops, equipment and livestock, without permission of the bank and without remitting the proceeds to the bank to pay on the loan. Two tractors were sold or traded-in to purchase another tractor and when the bank inquired about the new tractor and the absence of the old tractors, the debtor stated that the new tractor was only leased and the old tractors were being repaired. The debtor sold some grain under the name of the debtor's three-month old son and forged the son's signature on the check. In order to hide the transactions, the debtor deposited the proceeds in the spouse's account in a separate bank. All of the proceeds were used for personal expenses. The debtor also failed to list the debtor's eligibility for CRP payments, although the debtor claimed that the payments were not listed because the debtor may not have been eligible for the payments because of contract violations. The bank sought to deny the debtor's Chapter 7 discharge. The court held that the repeated sales of collateral and attempts to hide the transactions demonstrated a willful intent to harm the secured creditor and justified denial of discharge of the bank's claim. However, the court held that the general discharge would still be allowed. ***In re* Zinke, 174 B.R. 1017 (Bankr. D. N.D. 1994)**.

EXEMPTIONS

AVOIDABLE LIENS. The debtor claimed a homestead exemption in a residence in which the debtor had $2,100 in equity after two consensual liens. The property was also subject to two judgment liens far in excess of the value of the property. The court held that the judgment liens were voidable only to the extent of the debtor's equity in the property as of the date of the petition. **In re Menell, 160 B.R. 524 (Bankr. D. N.J. 1993), *aff'd*, 174 B.R. 685 (D. N.J. 1994), *aff'd*, 37 F.3d 113 (3d Cir. 1994)**.

SETOFF. The debtors owed the Federal Crop Insurance Corporation for crop insurance premiums for 1992. The debtors' 1992 income tax return claimed a refund and the FCIC filed an administrative offset with the IRS for a portion of the refund equal to the unpaid premium. The offset was made less than 90 days before the bankruptcy filing and the debtors sought recovery of the offset amount. The court held that the FCIC offset was allowed because both debts occurred prepetition and the FCIC and IRS are considered the same for the purposes of mutuality of the prepetition debts. The debtors argued that the setoff was not allowed because the refund did not arise until less than 90 days before the petition, when the income tax return was filed. The court held that the debtors became eligible for the refund at the end of the taxable year to which the refund applied. ***In re* Kalenze, 175 B.R. 35 (Bankr. D. N.D. 1994)**.

CHAPTER 12-*ALM* § 13.03[8].*

DISPOSABLE INCOME. The debtors had completed their five-year Chapter 12 plan and sought a discharge. The unsecured creditors objected to the discharge because the debtors did not pay all of their disposable income during the plan. The debtors argued that they should have been allowed to deduct depreciation from disposable income and that the disposable income should have been calculated over the entire five years and not annually. The court held that depreciation was not a deduction allowed from disposable income because the statute allowed only for expenses *paid* by the debtors. The court also held that disposable income was to be determined in each year of the plan because of case law precedents and because the plan provided for annual payments, indicating the debtors' intent to make disposable income payments annually. The debtors also sought a hardship discharge, arguing that it was the trustee's responsibility to see that all payments were made annually and disposable income was calculated accurately; therefore, the debtors' failure to make the additional disposable income payments was not their fault. The court denied the hardship discharge and held that the debtors had the responsibility to comply with the statute and plan provisions and that the trustee's duty is only to monitor the plan payments. ***In re* Linden, 174 B.R. 769 (C.D. Ill. 1994)**.

SETTLEMENT AGREEMENTS. The Chapter 12 debtors reached an agreement with a secured creditor for a cash payment and turnover of farm equipment in satisfaction of the secured claim. The money and equipment were to be paid "promptly" upon court approval. Although the debtors quickly transferred the property, the cash was not paid. The creditor sought rescission of the agreement and the Bankruptcy Court allowed rescission under "bankruptcy law" without citing any authority. The District Court held that rescission was improper because the bankruptcy court made no finding of fraud, bad faith, mutual mistake, or actual or construction repudiation by the debtors. The court also held that rescission under general bankruptcy court equitable powers was inappropriate because the debtors could not be returned to the original status before the agreement was made. ***In re* Mettlen, 174 B.R. 822 (D. Kan. 1994)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

CLAIMS. The IRS filed a claim for unpaid federal income taxes, including the taxable year just before the filing of the petition. The claim included secured and unsecured claims. The debtors filed their income tax return for the year just prior to filing for bankruptcy and the return claimed a refund. The debtors did not object to the IRS claims which were reduced by the taxes paid on the new return, but the debtors' plan did not list the IRS claims as secured or unsecured, although the plan provided for full payment of all taxes. The IRS sought to offset the last tax income tax refund against its secured claims. The court held that the setoff was allowed because the debtors did not object to the secured claim filed by the IRS. The court held that the confirmation of a plan which did not characterize the claim as secured did not function as an objection to the secured status of the claim; therefore, the secured status of the claim was not changed by the plan. **Matter of Olson, 175 B.R. 30 (Bankr. D. Neb. 1994)**.

PLAN. The debtor's Chapter 11 plan provided that all liens on claims paid in the plan were to be reduced to the amount of property securing the liens. The plan was confirmed without objection and the debtor sought to have the liens released. The IRS had filed a secured claim in the case and objected to the lien release, arguing that the plan provision "stripping down" its lien to the value of the collateral was not enforceable because the Bankruptcy Court was without jurisdiction to approve the provision which was contrary to *Dewsnup v. Timm, 502 U.S. 410 (1992)*. The court held that provisions of a confirmed plan are res judicata unless the result of fraud or lack of due process. The court found that no fraud was charged by the IRS and the IRS had sufficient notice and opportunity to object to the plan to satisfy due process concerns. Therefore, the IRS lien was reduced to the value of the collateral. The court held that *Dewsnup v. Timm*, did not apply to Chapter 11 cases; therefore, the plan provision was not contrary to that case. ***In re* Bowen, 174 B.R. 840 (Bankr. S.D. Ga. 1994)**.

TAX LIENS. In May through September 1992, the IRS made assessments for unpaid taxes owed by the debtor. In October 1992, the debtor transferred the debtor's interest in a house to the debtor's spouse who was obtaining a divorce from the debtor. In December 1992, the spouse sold the house to a third party. In January 1993, the IRS filed its lien against the debtor's property. The IRS levied against and sold the debtor's personal property just prior to the debtor's filing for bankruptcy but the IRS returned the proceeds to the estate. The trustee also obtained money from the debtor's ex-spouse as a settlement for an action to recover for the debtor's transfer of the debtor's interest in the house in October 1992. The IRS claimed it had a secured claim as to the levy proceeds and the settlement proceeds based on its pre-petition lien filing. The court held that once the real property was sold to a good faith purchaser prior to the filing of the lien, the lien could not attach to the property. The IRS argued that the recovery of the money from the ex-spouse voided the transfer as to that money and reinstated the tax lien. The court also held that the lien did not re-attach after the trustee recovered the money, reasoning that a lien does not re-attach by means of a trustee's preference action. The IRS was allowed a secured claim as to the proceeds of the sale of the personal property because the lien was filed before the sale and before the petition. ***In re* Watt, 174 B.R. 942 (Bankr. S.D. Ohio 1994)**.

The debtors' bankruptcy estate included real property inherited more than 11 years before the bankruptcy filing. The decedent's estate elected to make the federal estate tax payments in 10 annual installments but an amount was still owed on the date of the petition. The IRS filed a claim for the taxes, asserting a lien against the decedent's property. The IRS acknowledged that its estate tax lien had expired after ten years but the IRS argued that Ill. Probate Act ¶ 5/18-14 allowed probate estate property to remain subject to charges against the estate. The IRS argued that this statute created a lien against the decedent's property which had not expired. The court held that Ill. Probate Code § 20-4(c) (1979) limited this charge to three years after the decedent's death. The IRS responded that the state limitations period did not apply to the IRS. The court held that the state laws did not create a lien against the estate property and that the limitations period did not run as to the IRS claim but to the state statute which the IRS claimed created the IRS's claimed lien; therefore, the IRS had no claim against the debtors' property. **In re White, 174 B.R. 775 (Bankr. S.D. Ill. 1994)**.

CONTRACTS

BREACH. The defendants had suffered a loss of their hogs from disease and entered into an oral contract with the plaintiff to raise hogs purchased by the defendants, with each party to receive a portion of the new pigs bred by the plaintiff. A portion of the proceeds from the sale of hogs was to pay for feed. The defendants contracted with a feed supplier for the feed for the hog operation but the plaintiff switched to another supplier after the young pigs began dying and having other health problems. The defendants then notified the plaintiff that the contract was terminated and the plaintiff sued for an injunction against removal of the hogs. The court held that the termination of the contract was a breach of the contract because the contract was not indefinite or at will. The court found that the parties had intended the contract to last for three years because that was the expected time needed to replenish the defendant's herd and the plaintiff had leased the premises for three years. In addition, the court held that the defendants had breached the contract provision to supply the best feed since the evidence showed that the feed was causing the loss of the pigs. The court found no breach by the plaintiff for poor husbandry practices since a veterinarian had testified that the plaintiff's management of the farrowing operation was very good. The court also held that the plaintiff had the right to possession of the hogs under a herder's lien, Iowa Code § 579.1, for the plaintiff's efforts in raising the hogs. **Keppy v. Lilienthal, 524 N.W.2d 436 (Iowa Ct. App. 1994)**.

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The APHIS has adopted as final regulations increasing the indemnity for brucellosis reactor and exposed cattle and bison destroyed during herd depopulation or after being sold or traded from a herd subsequently found to be infected with brucellosis. **60 Fed. Reg. 5837 (Jan. 31, 1995)**.

CROP INSURANCE-*ALM* § 13.04.* The FCIC has issued proposed regulations amending the nursery crop endorsement to the Common Crop Insurance Policy to add a nursery frost, freeze and cold damage exclusion option. **60 Fed. Reg. 5339 (Jan. 27, 1995)**.

IMPORTS. The CFSA has adopted as final regulations implementing the end-use certificate program for wheat and barley imported from any foreign country. **60 Fed. Reg. 5087 (Jan. 26, 1995)**.

PRODUCTION ADJUSTMENT PROGRAMS. The CCC has issued proposed regulations governing several aspects of the 1995 wheat, feed grains, cotton and rice programs, including reducing the advance deficiency

******Agricultural Law Manual*** **(ALM). For information about ordering the** ***Manual*****, see the last page of this issue.**

payment to 50 percent of the final estimated payment for 1995 and to 40 percent for 1996 and 1997 crops. The proposed regulations allow producers to plant minor oilseeds, soybeans and mung beans on up to 50 percent of the designated ACR acreage. **60 Fed. Reg. 4571 (Jan. 24, 1995)**.

TOBACCO. The CCC has proposed regulations for the possible 1995 marketing quota ranges for tobacco:

Kind and Type	Million pounds
Virginia fire-cured(type 21)	1.5 to 2
Ky-Tenn. fire-cured(types 22-23)	32 to 40
Dark air-cured(types 35-36)	8 to 10
Virginia sun-cured(type 37)	0.08 to .1
Cigar filler & binder(types 42-44, 53-55)	8 to 10
Cigar filler (type 46)	0

60 Fed. Reg. 4871 (Jan. 25, 1995).

FEDERAL ESTATE AND GIFT TAX

MARITAL DEDUCTION-*ALM* § 5.04[3].* The decedent's surviving spouse elected to take the Tennessee statutory elective share of the decedent's estate. The elective share was approved by the probate court and the estate distributed property equal to the full share without reduction for a pro rata share of the decedent's secured debt. Citing *Estate of Williams v. Comm'r, 103 T.C. 451 (1994)* which also involved the same Tennessee law, the court held that under Tennessee law, the elective share had to be reduced by the pro rata share of secured debts. **Estate of Tenenbaum v. Comm'r, T.C. Memo. 1995-48**.

SPECIAL USE VALUATION-*ALM* § 5.03[2].* The decedent's estate included undivided interests in six ranches. The other interests were owned by qualified heirs who acquired the interests prior to the decedent's death. The decedent's interests passed to the taxpayer, another qualified heir. In order to obtain financing, the heirs exchanged interests in the ranches such that the taxpayer's interest in one ranch increased and the taxpayer owned all of another ranch. The IRS ruled that the exchanges would not cause recapture of special use valuation so long as the values of the properties exchanged were the same and the exchanges met the requirements of I.R.C. § 1031. The IRS refused to rule on a request for partial revocation of the special use valuation election. **Ltr. Rul. 9502015, Oct. 21, 1994**.

TRANSFERS WITHIN THREE YEARS OF DEATH-*ALM* § 5.02[2].* The decedent and spouse had transferred title in two farms to two Illinois land trusts with the decedent and spouse each retaining a 50 percent interest in each trust. The trust provided that at least three of the beneficiaries owning at least two-thirds of the trust's interests had the power to direct the trustee to sell or mortgage the trust property. The beneficiaries retained control over the use of and income from the trust property. The decedent had transferred by gift all of the 50 percent interest in the first trust, with 12.96 percent transferred within three years of death. The decedent had transferred by gift 29.4 percent of the other trust interest, all within three years of death. The estate argued that the decedent's power over the trust was not governed by I.R.C. § 2038 because the decedent did not have the power to divest the other beneficiaries of their interests in the trust property. The IRS ruled that Section 2038 applied if the decedent had the power alone or in conjunction with any other person to alter, amend, revoke or terminate the enjoyment of the property. Because the decedent had the power to revoke the trust and sell the property in conjunction with less than all of the current beneficiaries when the gifts were made within three years of death, the decedent had the power to alter the timing of the enjoyment of the trust property during the three years before death. The IRS also cited *Adolphson v. U.S., 90-2 U.S. Tax Cas. (CCH) ¶ 60,048 (C.D. Ill. 1990)* in support of its ruling. **Ltr. Rul. 9502005, Sept. 9, 1994**.

VALUATION. The taxpayers had purchased a vacation home which was located on the east side of a street. The taxpayers later purchased two lots on the west side of the street which had a view of and access to a waterfront of a bay. The two west lots were used by the taxpayers as a boat launch and other family activities. The properties were transferred to a trust and the taxpayers sought a ruling that the two west lots were includible in the residence for purposes of I.R.C. § 2702. The IRS ruled that the two west lots were not in excess of what was reasonably appropriate for residential purposes under Treas. Reg. § 25.2702-5(c) and would be eligible for the qualified personal residence trust exception to I.R.C. § 2702. **Ltr. Rul. 9502025, Oct. 27, 1994**.

FEDERAL INCOME TAXATION

CAPITAL EXPENSES. A limited partnership and related S corporation owned land which was to be developed for a housing subdivision. For the taxable years involved, the companies incurred costs for property taxes, permits, feasibility studies, labor and other requirements for the first step in the development process. No construction or other property improvements had taken place and the companies argued that the costs of development were not required to be capitalized because no property had yet been produced. The court held that the activities of the companies were sufficient to have "produced" the property for purposes of requiring capitalization of the indirect costs related to development of the property and all the direct costs. **Von-Lusk v. Comm'r, 104 T.C. No. 8 (1995)**.

COMMODITY STRADDLES. The taxpayer was an attorney who invested in commodity straddles. In one taxable year, the taxpayer had losses and gains from straddle transactions and claimed a deduction for the amount of losses exceeding the gains. The court held that the taxpayer was limited to deduct losses only to the extent of the gains because the taxpayer was not in the trade or business of commodity transactions. **Nolte v. Comm'r, T.C. Memo. 1995-57**.

DISCHARGE OF INDEBTEDNESS-*ALM* § 4.02[15].* The taxpayers had filed a Chapter 11 case and received a discharge of debts. The bankruptcy trustee filed a final estate income tax return which listed significant net operating losses remaining. The taxpayer offset their postbankruptcy income by these NOLs. The taxpayers argued that the NOLs were not required to be reduced by the amount of discharge of indebtedness income because the discharge of indebtedness occurred with the bankruptcy estate and the NOLs passed to the taxpayers. The court held that the NOLs were reduced by the amount of discharge of indebtedness income whether or not the trustee noted the reduction. Because the taxpayers failed to provide any evidence that the discharge of indebtedness income was less than the NOLS, no NOL deduction was allowed. **Firsdon v. U.S. 95-1 U.S. Tax Cas. (CCH) ¶ 50,040 (N.D. Ohio 1994)**.

HOBBY LOSSES-*ALM* § 4.05[1].* The taxpayer operated a horse training and breeding activity. The court found that the taxpayer had little expertise in this area, devoted less than full time to the activity and had no reasonable expectation of appreciation in value of the horses. The court held that the taxpayer could not claim deductions for expenses in excess of income because the taxpayer did not operated the activity in a business-like manner with the intent to make a profit. **Bischoff v. Comm'r, T.C. Memo. 1995-34**.

INTEREST. The taxpayer claimed a deduction for interest on a note secured by a farm which the taxpayer used as a second residence; however, the taxpayer did not identify the farm as a second residence until after filing the petition in the Tax Court for a refund. The court held that the deduction was allowed because there was no time limit for an election to claim a property as a second residence for purposes of the interest deduction. **Lawler v. Comm'r, T.C. Memo. 1995-26**.

INVESTMENT TAX CREDIT-*ALM* § 4.03[12].* The taxpayers renovated a duplex which the taxpayers used as their residence and rented the other half to third parties. The duplex was a qualified rehabilitated building and the renovation expenses were qualified rehabilitation expenses but the taxpayers were not eligible for the 10 percent investment tax credit because the duplex was not a certified historic structure and the taxpayers and renters used the building for residential purposes. **Johnston v. Comm'r, T.C. Memo. 1995-36**.

The taxpayer had purchased I.R.C. § 38 property in 1985 which was placed in service in 1986, and 1987. Because the taxpayer had investment tax credit carryforwards from previous years, the full credit for 1986 and 1987 could not be claimed and also had to be carried forward and was reduced to the amount allowable in the later years. The taxpayer reduced the basis of the property by the amount of investment tax credit eventually allowed for each property and not for the amount of investment tax credit allowable in the tax year the property was placed in service. The court held that the statute was clear that the basis reduction was to be determined in the year the investment tax credit amount is determined, the tax year the property was placed in service, and there was no provision for later adjustment of the basis reduction to account for a lesser allowed investment tax credit. **The B.F. Goodrich Co. v. U.S., 95-1 U.S. Tax Cas. (CCH) ¶ 50,050 (Fed. Cl. 1995)**.

LETTER RULINGS. The IRS has issued procedures and fees for requests for background documents associated with letter rulings or technical advice memoranda issued by the National Office. **Rev. Proc. 95-15, I.R.B. 1995-5, 49**.

PENSION PLANS. For plans beginning in January 1995, the weighted average is 7.27 percent with the permissible range of 6.55 to 7.93 percent (90 to 109 percent permissable range) and 6.55 to 8.00 percent (90 to 110 percent permissable range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 95-6, I.R.B. 1995-5, 47**.

REFUNDS. The taxpayer was an agricultural cooperative which had changed its tax year in 1983. The IRS had approved the tax year change and required a separate return for the short tax year created by the change. The cooperative had a net operating loss for the short tax year which it was prevented from carrying back under the tax year change agreement with the IRS. The cooperative was unable to use the net operating loss in the next full tax year and filed for a refund based upon the carryback of the unused net operating loss to the tax year prior to the short taxable year, essentially challenging the agreement provision prohibiting the carryback. The IRS challenged the refund suit on the basis that the refund was not sought within three years after the date of the return for the short tax year in which the net operating loss arose. The cooperative argued that the operative tax year was the year after the short taxable year because it was that year which failed to use the entire net operating losses and required the carry back of the losses. The court held that the three year period for filing refunds started in the tax year the net operating loss arose. **Glenwood Coop., Inc. v. U.S., 95-1 U.S. Tax Cas. (CCH) ¶ 50,051 (Fed. Cl. 1995)**.

SAFE HARBOR INTEREST RATES
February 1995

	Annual	Semi-annual	Quarterly	Monthly
		Short-term		
AFR	7.43	7.30	7.23	7.19
110% AFR	8.19	8.03	7.95	7.90
120% AFR	8.95	8.76	8.67	8.60
		Mid-term		
AFR	7.96	7.81	7.74	7.69
110% AFR	8.77	8.59	8.50	8.44
120% AFR	9.59	9.37	9.26	9.19
		Long-term		
AFR	8.07	7.91	7.83	7.78
110% AFR	8.89	8.70	8.61	8.55
120% AFR	9.72	9.49	9.38	9.31

S CORPORATIONS-*ALM* § 7.02[3][c].*

ACCUMULATED ADJUSTMENTS ACCOUNT. The taxpayer owned shares of an S corporation along with the taxpayer's child. The S corporation had subchapter C earnings. In one tax year the corporation redeemed some of the taxpayer's stock for cash and the redemption was not treated as a sale or exchange under I.R.C. §§ 302(a), 303(a). At the end of the tax year, the taxpayer's basis in stock exceeded the amount of the redemption distribution and the corporation's accumulated adjustments account (AAA) also exceeded the redemption amount. The IRS ruled that because Sections 302(a) and 303(a) did not apply to the redemption, Section 301 applied. The IRS also ruled that the redemption distribution was not included in the taxpayer's income because the corporation had an AAA in excess of the redemption amount and the taxpayer's basis exceeded the redemption amount. The IRS also ruled that the entire redemption amount would be used to decrease the AAA. **Rev. Rul. 95-14, I.R.B. 1995-6, 29**.

TAX YEAR. An S corporation sold more than 50 percent of its stock to new shareholders; however, the corporation did not change its taxable year to meet the requirements of I.R.C. § 1378(c) that the taxable year of the corporation match the tax years of a majority of the shareholders. The court held that failure to adopt a permitted tax year caused the termination of S corporation status, even though this cause of termination was not listed in I.R.C. § 1362(d). **Farmers Gin, Inc. v. Comm'r, T.C. Memo. 1995-25**.

SALE OF RESIDENCE. The taxpayers transferred their residence to their child subject to an usufruct (life estate) for the taxpayers. The court held that the taxpayers were not entitled to the one-time exclusion of gain under I.R.C. § 121 because the taxpayers did not transfer a residence but only a future interest in the property. **Roy v. Comm'r, T.C. Memo. 1995-23**.

TRAVEL EXPENSES. A self-employed logger was allowed to deduct the costs of transportation from the taxpayer's residence to the first logging site and from the last logging site back to the residence because the taxpayer met the requirements of *Rev. Rul. 90-23, 1990-1 C.B. 28*. **Stalcup v. Comm'r, T.C. Memo. 1995-43; Merritt v. Comm'r, T.C. Memo. 1995-44**.

LANDLORD AND TENANT

TERMINATION. The parties entered into a three year lease under which the defendant farmed the plaintiff's farmland for a share of the crop. The defendant agreed to farm the land in a "farmer-like manner." The plaintiff terminated the lease in the middle of the term, alleging that the defendant did not farm the land in a farmer-like manner. The defendant sought recovery of lost profits based on breach of the lease by the plaintiff. The jury verdict awarded the defendant the amount of profit which would have been realized on a crop which would have been produced during the remainder of the lease. The trial judge reversed the jury verdict and the defendant appealed. The appellate court held that the jury had sufficient evidence of the defendant's actions to determine that the defendant did not breach the lease requirement of farmer-like practices and that the plaintiff's early termination of the lease was a breach of the implied covenant of good faith and fair dealing. The appellate court also held that the jury had sufficient evidence of the productivity of the farm land, ironically from the plaintiff's own witnesses, to determine the amount of lost profits from the early termination of the lease. Therefore, the appellate court reinstated the jury verdict. The plaintiff had also sought to provide evidence on the meaning of the contract terms, such as "farmer-like manner," but was prevented by the trial court. The appellate court held that the trial court did not commit reversible error because the court allowed testimony of neighboring farmers as to their practices in obtaining their yields. This testimony was sufficient for the jury to decide if the defendant had breached the lease prior to termination. **Fox Grain & Cattle Co. v. Maxwell, 885 P.2d 432 (Mont. 1994)**.

NUISANCE

HOG CONFINEMENT FACILITY-*ALM* § 13.08.* When the plaintiff purchased the land neighboring the defendant's property in 1988, the defendant had operated three turkey houses for more than one year on the defendant's property. The plaintiff purchased the neighboring property for residential development and had begun selling lots when the defendant constructed a large hog confinement facility on the defendant's property. The plaintiff brought a nuisance action and sought to enjoin the operation of the confinement operation. The defendant argued that the North Carolina "right to farm" act, N.C. Gen. Stat. § 106-701 prohibited a nuisance suit because the defendant's farm operation pre-dated the plaintiff's purchase of the neighboring land by over one year. The court held that the statute applied only as to the existing nature of the farm operation, i.e., the turkey houses, and that the one year requirement applied anew to the new hog confinement operation; therefore, the nuisance suit was not prohibited by Section 106-701. The defendant also argued that the confinement operation's compliance with the Federal Watershed Protection and Flood Prevention Act preempted any nuisance action. The court held that the federal statute contained no provision covering preemption of state nuisance actions. **Durham v. Britt, 451 S.E.2d 1 (N.C. Ct. App. 1994)**.

PROBATE

ADMINISTRATIVE EXPENSES. The debtors' bankruptcy estate included real property inherited more than 11 years before the bankruptcy filing. The inherited land was to be sold during the bankruptcy case and the decedent's executor claimed a portion of the proceeds of crops grown on the land to cover the federal estate tax liability of the decedent's estate. As with a similar claim filed by the IRS, see case summary *supra*, the court held that the administrative expense charges against the decedent's estate property expired three years after the decedent's death. The court also held that under Illinois probate law, the crops would be considered income of the estate and could not be used to satisfy administrative expenses; therefore, the proceeds of the crops belonged to the debtors as heirs and their bankruptcy estate. ***In re* White, 174 B.R. 779 (Bankr. S.D. Ill. 1994)**.

PRODUCTS LIABILITY

PULLEY. The plaintiff operated a grain elevator which was built by one defendant with a pulley head drive unit purchased from another defendant and manufactured by another defendant. The plaintiff alleged that the pulley became loose and travelled along its axle until it scraped against the pulley housing, causing sparks which ignited grain dust in the elevator. The trial court dismissed the builder defendant as not having any ability to alter or check the drive unit during installation. The court also dismissed the purchaser of the unit because the purchaser also had no knowledge that the unit was defective. The court held that a nonmanufacturer seller had no duty to inspect a product to determine its safety. The trial court ruled that the defendant manufacturer was not liable for the explosion because the plaintiff failed to demonstrate that the pulley was the cause of the explosion. The plaintiff claimed that the screws holding the pulley were not sufficiently tight to prevent the traveling of the pulley. The defendant had presented evidence of a test of a similar pulley with screws tightened similarly to the installed pulley and the test showed that the pulley would not have traveled under similar conditions. The court held that the plaintiff's failure to counter this test evidence and failure to sufficiently rule out other causes was adequate support for the trial court's judgment for the defendant. **Ferruzzi, U.S.A., Inc. v. R.J. Tricon Co., 645 So.2d 685 (La. Ct. App. 1994)**.

AGRICULTURAL LAW PRESS
P.O. BOX 5444
MADISON, WI 53705-5444

TRESPASS

CONVERSION. The plaintiff and defendant were neighbors and the defendant claimed that the plaintiff's cattle crossed on to the defendant's land. The defendant penned the cattle and transported them to an auction house where the cattle were sold. The plaintiff sued for conversion. The defendant argued that Ala. Code §§ 3-2-1, 3-5-6 allowed the defendant to take control of the cattle and dispose of them without notifying the plaintiff. However, the statute allows such actions only where the owner of the trespassing cattle is unknown and the defendant testified that none of the neighbors was notified about the cattle to discover who owned the cattle. In addition, evidence was presented that a long standing animosity existed between the parties. The appellate court upheld a jury verdict for the plaintiff based on sufficient evidence to support the verdict. **Watson v. Thomas, 646 So.2d 84 (Ala. Ct. App. 1994)**.

ISSUE INDEX